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Subject: RE: Snake River dam decision by the Ninth Circuit

I do not think that this Ninth Circuit decision on the Snake River prevents our doing a TMDL for the Columbia River, as a legal matter. The decision was based on a specific administrative record before the Court and the action that was challenged was the operating plan for the Snake River dams. I am not clear if that record applied to or included any of the Columbia River dams. The TMDL ,however, provides information which was not included in the record of the litigation. I believe the dissenting opinion understood the issue clearly. The real question is what the Court would do with a challenge to the TMDL. In that case there would be a very different record before the Court. The Decision certainly indicates the Court's view about remedy-ie no removal of the dams. The technical issue in my mind is how we distinguish between the impact of the operation of the dams , on which there was no real information before the Court, and the impact of the existence.